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Docket No. 88-127

Supreme Court, U.S.

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In the Supreme Court of the United States

October Term, 1987

NORFOLK AND WESTERN RAILWAY COMPANY,
Petitioner,

v.

ROBERT T. GOODE, JR.,
Respondent.

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA**

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QUESTIONS PRESENTED

I. Whether a railroad worker who was injured while repairing railroad equipment used for braking and stopping hopper cars and who does not perform traditional longshoring activities, is a "maritime employee" under the Longshoremen's and Harbor Workers' Compensation Act?

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STATUTES

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**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1987

No. 88-127

NORFOLK AND WESTERN RAILWAY COMPANY,
Petitioner,

v.

ROBERT T. GOODE, JR.,
Respondent.

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA**

Respondent, Robert T. Goode, Jr.,
respectfully prays the Petition for a
Writ of Certiorari of Norfolk & Western
Railway Company be denied.

STATUTES INVOLVED

This case requires interpretation
of provisions of the Longshoremen's and
Harbor Workers' Compensation Act

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

No. 95-137

NORFOLK AND WESTERN RAILWAY COMPANY,

Respondent,

vs.

ROBERT T. COOPER, JR.,

Petitioner.

PETITION FOR A WRIT OF HABEAS CORPUS
TO THE SUPREME COURT OF VIRGINIA

Respondent, Robert T. Cooper, Jr.,

respectfully prays the Petition for a

Writ of Habeas Corpus of Norfolk & Western

Railway Company be denied.

WITNESSES MY HAND

This case requires investigation

of provisions of the Interstate Commerce Act

and the Interstate Commerce Commission Act

("LHWCA"), 33 U.S.C. Section 902(3), and also involves the Federal Employer's Liability Act ("FELA"), 45 U.S.C. Sections 51-60. The relevant portions of these Acts are reprinted in the Appendix to the Petition.

STATEMENT OF THE CASE

The Respondent Robert T. Goode, Jr. ("Goode") filed suit under the Federal Employers Liability Act ("FELA") against the Petitioner Norfolk & Western Railway Company ("Railroad") in the Circuit Court for the City of Norfolk, for injuries sustained on February 11, 1985, while performing maintenance on a retarder at the Railroad's Lamberts Point Yard in Norfolk, Virginia. The injury resulted in the loss of an index finger and permanent damage to another finger as

and
also involves the Federal Employees
Liability Act ("FELA"), 45 U.S.C.
Sections 51-60. The relevant portions of
these Acts are reprinted in the appendix
to the Petition.

STATEMENT OF THE CASE

The Respondent Robert T. Goode, Jr.
("Goode") filed suit under the Federal
Employees Liability Act ("FELA") against
the petitioner Norfolk & Western Railway
Company ("Norfolk") in the Circuit Court
for the City of Norfolk, for damages
sustained on February 11, 1982, while
performing maintenance as a railroad
car painter at a transfer point near
Norfolk, Virginia. The injury resulted
in the loss of an index finger and
permanent damage to another finger as

well as to the hand. Goode was unable to work in his occupation as a machinist from the date of the accident to August 1, 1985.

The Railroad moved to dismiss the suit contending that the Longshoremen's Harbor Workers' Compensation Act ("LHWCA") was Goode's exclusive remedy for his injuries. On November 13, 1986, Judge Charles R. Waters, II, of the Circuit Court of the City of Norfolk issued a letter opinion dismissing the suit holding that the LHWCA provided Goode's exclusive remedy. An Order to this effect was entered by the Court on December 17, 1986. Copies of Judge Water's letter and the Order are reprinted in the Appendix to the Petition.

well as to the fact that Goode was unable to
work in his occupation as a machinist
from the date of the accident to August
1, 1934.

The Railroad moved to dismiss the
bill contending that the longshoremen's
union, "International Longshoremen's Association",
was Goode's exclusive remedy
for his injuries. On November 17, 1934,
Judge Charles R. Wacker, Jr., of the
District Court of the City of Norfolk
rendered a decision denying the
bill holding that the LIMA provided
Goode's exclusive remedy. An order to
this effect was entered by the Court on
November 17, 1934. Copies of Judge
Wacker's letter and the order are
attached to the Appendix in the
enclosure.

The Supreme Court of Virginia granted an appeal and on April 22, 1988 issued a decree reversing the decision of the Circuit Court and remanding the case for a trial on the FELA claim. The Supreme Court of Virginia did not render an opinion in this action but simply cited in the decree its opinion in Schwalb v. Chesapeake & Ohio Railway Co., 235 Va. 27, 365 S.E.2d 742 (1988), decided on March 4, 1988. A copy of the Decree of April 22, 1988 is reprinted in the Appendix to the Petition. The Railroad is seeking review in this Court of the decision of the Supreme Court of Virginia.

The facts relevant to the issue are as follows:

The Supreme Court of Virginia
granted an appeal and on April 24, 1932
issued a decision reversing the decision of
the Circuit Court and remanding the case
for a trial in the state courts. The
Supreme Court of Virginia did not render
an opinion in this action but simply
stated: "As the decision is opinion" is
Adkins v. Children's Hospital, Inc.
235 Va. 37, 165 S.E.2d 142 (1938).
decided on March 4, 1934. A copy of the
decision of April 22, 1932 is captioned in
the Appendix to the Petition. The
petitioner has asked review in this Court
of the decision of the Supreme Court of
Virginia.
The facts relevant to the issue are
as follows:

FACTUAL SUMMARY

Goode is employed in the Motive Power Department of the Railroad as a machinist. App. at 13A. Machinists are assigned jobs based solely on seniority by hiring date. App. at 25A, 32A. Machinists may be assigned work in the geographic range from Norfolk, Virginia to Crewe, Virginia, approximately 125 miles from Norfolk. App. at 25A-26A, 32A-33A.

One of the sites where a machinist may be assigned to work in Norfolk, Virginia, is the Lamberts Point Yard. The Lamberts Point Yard is a coal loading terminal where coal mined in Virginia, West Virginia, and Kentucky is brought by train for transfer to ships. Goode worked at the Lamberts Point Yard. At the Lamberts Point Yard in Norfolk, a

machinist may be assigned to work at the 38th Street car shops, the Motive Power Building or the Roundhouse. App. at 26A, 33A. At the Lamberts Point Yard a machinist can be assigned a number of tasks, including: repairing railroad cars; rerailing derailed railroad cars; repairing and maintaining pushers (small electronic locomotives) and the Barney (a devise that pushes railroad cars up an incline); repairing and maintaining retarders; and releasing hand brakes on railroad cars. App. at 26A, 33A. Some of the job assignments may require the machinist to work on pier machinery, both over the water and in the shop. At least half of the work performed by Goode was in areas other than maintenance and repair of pier machinery. App. at 6A, 15A.

On February 11, 1985, Goode was assigned the duty of performing maintenance on an air cylinder on a retarder at the Lamberts Point Yard. App. at 18A. While performing the maintenance Goode was injured. A retarder is a device used to stop or slow the movement of railroad cars. App. at 27A, 34A. Retarders are used throughout the Railroad's system and are common to all railroads. App. at 27A, 34A, 48A-49A. Retarders are found at other coal unloading facilities which have no connection with loading ships, such as steel mills and power plants.

The retarder Goode was assigned to repair is located on land approximately six hundred feet from the coal loading piers at the Lamberts Point Yard in an apparatus called the southside dumper.

App. at 18A. Once a railroad car entering the dumper has stopped, it is seized by mechanical arms, turned upside-down and the coal is dumped from the car to a conveyor belt. Once the car is dumped, it moves by gravity to a "kick-back" incline, then by gravity it is free-rolled to an empty return yard for its trip back to the coal fields.

Once coal is dumped from the railroad cars, it is carried by a conveyor belt system from the southside dumper to the Belt Change House. In the Belt Change House the coal is transferred to another conveyor belt system that begins the ship loading process by carrying coal to large chutes on the pier. App. at 39A-49A.

As a railroad machinist, Goode is eligible for retirement benefits under

top at 15A. Once a carload of
entering the dumper has stopped, it is
raised by mechanical means, turned right-
down and the coal is dumped into the car
to a conveyor. After the car is
dumped, it moves by gravity to a "pick-
back" machine. From the gravity it is
conveyed to an empty return yard for
its trip back to the coal fields.

When coal is dumped from the
return car, it is carried by a
conveyor belt system from the south-
dumper to the belt change house. In the
belt change house the coal is transferred
to another conveyor belt system that
carries the coal to large chutes on the
left. Top at 15A-15A.

As a railroad switch, 15000 is
eligible for railroad facilities under

the Federal Railroad Retirement System and to receive Railroad Retirement Board unemployment benefits when furloughed or dismissed due to illness or a disabling non-work related injury. The employment contract under which Goode works is negotiated under the Federal Railway Labor Act and his right to a hearing and to appeal any disciplinary action imposed by the Railroad is mandated by that Act. App. at 28A-29A, 35A-36A.

SUMMARY ARGUMENT

The decision of the Supreme Court of Virginia that Robert Goode is not a maritime employee under the Longshoremen's and Harbor Workers' Compensation Act is consistent with the decisions of this Court. A railroad worker is not performing traditional

longshoring work when repairing a railroad retarder system, and the worker is not a "maritime employee" under the Act. See Herb's Welding, Inc. v. Gray, 470 U.S. 414 (1985); Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249 (1977). Such a railroad worker is covered by the Federal Employer's Liability Act for injuries received while on-duty. Conti v. Norfolk & Western Ry. Co., 566 F.2d 890 (4th Cir. 1977). There is no conflict between the decision of the Virginia Supreme Court in this case and the decisions of this Court or the Court of Appeals for the Fourth Circuit, and, consequently, review of the decision of the Supreme Court of Virginia is not necessary.

ARGUMENT

A RAILROAD WORKER MAINTAINING RAILROAD EQUIPMENT AND NOT PERFORMING TRADITIONAL LONGSHORING WORK IS NOT A "MARITIME EMPLOYEE" UNDER THE LHWCA.

The sole issue considered by the Supreme Court of Virginia, and for which the Railroad is seeking review by this Court, is whether a railroad worker who was injured while repairing railroad equipment which is used for braking railroad hopper cars, and who does not perform traditional longshoring activities, is a "maritime employee" under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. Sec. 901, et seq. ("LHWCA"). If the railroad worker is covered by the LHWCA, this Act is his exclusive remedy for the injury. If he is not a "maritime employee" he is

ARGUMENT

A RAILROAD WORKER MAINTAINING
RAILROAD EQUIPMENT AND NOT
TRANSPORTING FREIGHT OR PASSENGERS
IS NOT A "RAILROAD EMPLOYEE"
UNDER THE LMCA.

The sole issue considered by the
Supreme Court of Virginia, and for which
the railroad is seeking review by this
Court, is whether a railroad worker who
was injured while repairing railroad
equipment which is used for hauling
railroad hopper cars, and who does not
perform traditional long-hauling
activities, is a "railroad employee"
under the Longshoreman's and Harbor
Workers' Compensation Act, 33 U.S.C. Sec.
901, 42 P.S. (1964). If the railroad
worker is covered by the LMCA, this Act
is his exclusive remedy for the injury.
If he is not a "railroad employee" he is

entitled to relief under the Federal Employer's Liability Act, 45 U.S.C. Sec. 51 et seq. ("FELA"). The Virginia Supreme Court, relying upon its decision in Schwalb v. Chesapeake & Ohio Ry. Co., 235 Va. 27, 365 S.E.2d 742 (1988), and by implication its decision in White v. Norfolk & Western Ry. Co., 217 Va. 823, 232 S.E.2d 852, cert. denied, 434 U.S. 860 (1977), functionally concluded that the plaintiff, Robert Goode, was not performing a traditional longshoring task and thus, was not an employee under the LHWCA. The Railroad argues that these decisions of the Virginia Supreme Court are contrary to recent judicial interpretations of the 1972 Amendments to the LHWCA. The decisions of the Virginia Supreme Court are consistent with the

entitled to relief under the Federal
Employee's Liability Act, 45 U.S.C. Sec.
21 92 922 ("FEA"). The Virginia
Supreme Court, relying upon its decision
in Robinson v. Chesapeake & Ohio Ry. Co.,
125 Va. 37, 305 S.E.2d 1199, and its
application of its decision in White v.
Rockwell & Heston Ry. Co., 117 Va. 413,
213 S.E.2d 637, 1964-2, 34 U.S.
200 (1977), accordingly concluded that
the plaintiff, Robert Gordon, was not
performing a traditional job function
and, thus, was not an employee under the
FEA. The Railroad argues that these
decisions of the Virginia Supreme Court
are contrary to recent judicial
interpretations of the 1975 amendments to
the FEA. The decision of the Virginia
Supreme Court are consistent with the

dictates of this Court and the LHWCA, and review is not necessary.

A. The decision of the Virginia Supreme Court follows the opinions of this Court and the Court of Appeals for the Fourth Circuit.

The LHWCA provides compensation for the death or disability of any person engaged in "maritime employment," if the disability or death results from an injury incurred upon the navigable waters of the United States or any adjoining pier or other area customarily used by an employer in loading, unloading, repairing, or building a vessel. See 33 U.S.C. Sections 902-903. A worker claiming coverage under the LHWCA must satisfy both a "status" and a "situs" test.¹ See Herb's Welding, Inc. v. Gray,

¹ The 1972 Amendments to the LHWCA enumerated this two-pronged test. Section 903(a) of the Act sets forth the "situs"

discretion of this Court and the ILMCA, and

review is not necessary.

A. The decision of the Virginia
Supreme Court follows the decision
of this Court and the Court of
Appeals for the Fourth Circuit.

The ILMCA provides compensation for
the death or disability of any person
employed in "maritime employment," if the
disability or death results from an
injury incurred upon the navigable waters
of the United States or any adjoining
port or other area customarily used by an
employer in loading, unloading,
repairing, or maintaining a vessel. For
U.S.C. sections 901-903, a worker
claiming coverage under the ILMCA must
satisfy both a "vessel" and a "maritime"
test. See *North v. United States*, 100 F.2d 1001.

The ILMCA amendments to the ILMCA
enacted this two-pronged test. Section
903(a) of the act sets forth the

470 U.S. 414, 415 (1985); P. C. Pfeiffer
Co. v. Ford, 444 U.S. 69, 74-75 (1979).

Railroad workers, such as Robert

test where a longshoreman's claim must occur. It states:

Except as otherwise provided in this section, compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

33 U.S.C. Sec. 903(a).

Section 902 of the Act defines the "status" test, that is, the status an employee must occupy before the LHWCA applies. It states:

The term 'employee' means any person engaged in maritime employment, including any longshoreman or any other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder and shipbreaker

33 U.S.C. Sec. 902(3).

Goode, have historically asserted claims under the FELA and have not been covered under the LHWCA. It is only in cases where a railroad employee has clearly been over the water or on a pier or a near by attachment, and was working with equipment directly involved in the actual movement of goods to ships, that the railroad worker has been removed from FELA coverage and placed under the LHWCA. See, e.g., Price v. Norfolk & Western Ry. Co., 618 F.2d 1059 (4th Cir. 1980). The decision of the Virginia Supreme Court that Goode was not covered by the LHWCA is consistent with the rulings of this Court.

In Herb's Welding Co. v. Gray, supra, this Court was presented with the question of whether a welder working on a fixed offshore oil-drilling platform was

covered by the LHWCA. The Court of Appeals for the Fifth Circuit had held that Gray's work as a welder had "a realistically significant relationship to traditional maritime activity involving navigation and commerce on navigable waters" and therefore extended coverage of the LHWCA to him. 470 U.S. at 418-19. This Court concluded that the Fifth Circuit had taken too expansive a reading of maritime employment which was the equivalent of ruling that anyone performing any task that is part and parcel of maritime commerce is in maritime employment for LHWCA purposes. 470 U.S. at 421. Concluding that Gray was not covered by the LHWCA, this Court stated the following concerning the 1972 Amendments to the LHWCA:

The expansion of the definition of navigable waters to include rather

covered by the LHWCA. The Court of Appeals for the Fifth Circuit has held that Gray's work as a welder had "a qualitatively significant relationship to traditional maritime activity involving navigation and commerce on navigable waters" and therefore extended coverage of the LHWCA to him. 470 U.S. at 432-33. This Court concluded that the Fifth Circuit had taken too expansive a reading of maritime employment which was the equivalent of asking that anyone performing any task that is part and parcel of maritime commerce is in maritime employment for LHWCA purposes. 470 U.S. at 433. Concluding that Gray was not covered by the LHWCA, this Court stated the following concerning the 1972 Amendments to the LHWCA:

The purposes of the definition as navigable waters to include rather

large shoreside areas necessitated an affirmative description of the particular employees working in those areas who would be covered. This was the function of the maritime employment requirement. But Congress did not seek to cover all those who breathe salt air. Its purpose was to cover those workers on the situs who are involved in the essential elements of loading and unloading; it is "clear that persons who are on the situs but not engaged in the overall process of loading or unloading vessels are not covered." Northeast Marine Terminal Co. v. Caputo, 432 U.S. at 267. While "maritime employment" is not limited to the occupations specifically mentioned in Sec. 2(3), neither can it be read to eliminate any requirement of a connection with the loading or construction of ships. As we have said, the "maritime employment" requirement is "an occupational test that focuses on loading and unloading." P. C. Pfiffer Co. v. Ford, 444 U.S. 69, 80 (1979). The Amendments were not meant "to cover employees who are not engaged in loading, unloading, repairing, or building a vessel, just because they were injured in an area adjoining navigable waters used for such activity." HR. Rep. NO. 92-1441, p. 11 (1972); S. Rep. NO. 92-1125, p. 13 (1972). We have never read "maritime employment" to

Large enterprises are not necessarily
an alternative description of the
business activities working in
these areas - who would be covered.
This was the intention of the
various employment regulations.
But Congress did not seek to cover
all those who working at a
the purpose was to cover those
workers on the other who are
involved in the essential elements
of loading and unloading. It is
clear that persons who are in the
ship are not engaged in the
overall process of loading or
unloading vessels are not covered.
Section 101(1) of the
Act, U.S. at 107. While
"ship" equipment is not
limited to the operations
specifically mentioned in the
Act, neither can it be read to
eliminate any regulation of a
connection with the loading or
unloading of ships. As we have
said, the "ship" equipment
regulation is an occupational
test that focuses on loading and
unloading. U.S. at 107. The
Act, U.S. at 107. The
assessments were to cover the cover
employees who are not engaged in
loading, unloading, repairing, or
building a vessel. That business
they were involved in at the
relevant time. The Act, U.S. at
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The Act, U.S. at 107. The Act, U.S. at 107.

extend so far beyond those actually involved in moving cargo between ship and land transportation [footnotes omitted].

470 U.S. at 423-24.

Similarly, in Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249 (1977), this Court extended LHWCA coverage to a checker and a terminal laborer who were performing traditional longshoring functions in connection with the movement of cargo from a ship to land transportation. In discussing the status test, this Court stated:

[The intent is] to cover those workers involved in the essential elements of unloading a vessel--taking cargo out of the hold, moving it away from the ship's side, and carrying it immediately to a storage or holding area.... [P]ersons who are on the situs but are not engaged in the overall process of loading and unloading vessels are not covered. Thus, employees such as truck drivers, whose responsibility on the waterfront is to pick up or deliver cargo unloaded from or destined for

extend no far beyond those actually
involved in moving cargo between
ship and land transportation
[footnote omitted]

476 U.S. at 423-24

Similarly, in Northwest Marine
Terminal Co. v. United States, 478 U.S. 542
(1987), the Court extended ILWU
coverage to a check and a terminal
laborer who were performing traditional
longshoremen functions in connection with
the movement of cargo from a ship to land
transportation. In discussing the status
test, this Court stated:

(The intent is) to cover those
workers involved in the essential
elements of unloading a vessel—
taking cargo out of the hold,
moving it away from the ship's
side, and carrying it immediately
to a storage or holding area....
[Persons who are on the pier but
are not engaged in the transfer
process of loading and unloading
vessels are not covered.] Thus,
employees such as truck drivers,
whose responsibility on the
waterfront is to pick up or deliver
cargo unloaded from or loaded for

maritime transportation are not covered.

249 U.S. at 266-67 See also Northeast Marine, 249 U.S. at 266 n.27.

The Caputo decision makes it clear that unless the activities of an employee are closely related to the actual loading or unloading of a vessel, the employee is not covered by the LHWCA, and an employee involved in land transportation is not covered by the LHWCA.

The nature of the work being performed by the employee was again emphasized by this Court in P.C. Pfeiffer Co. v. Ford, 444 U.S. 69 (1979), when it extended LHWCA coverage to a warehouseman who was injured while fastening military equipment to railroad flat cars and to a cotton header who was injured while unloading a bale of cotton from a dray wagon into a pier warehouse. This Court

carrying transportation are not covered.

249 U.S. at 266-67. See also *McIntosh*

McIntosh, 249 U.S. at 266 n.27.

The Circuit decision makes it clear that unless the activities of an employee are directly related to the actual loading or unloading of a vessel, the employee is not covered by the LHWCA, and an employee involved in land transportation is not covered by the LHWCA.

The nature of the work being performed by the employee was again emphasized by this Court in *E.C. Pfeiffer*, 207 U.S. 499, 444 U.S. 63 (1979), when it extended LHWCA coverage to a workman who was injured while loading military equipment to railroad flat cars and to a cotton header who was injured while unloading a bale of cotton from a hay wagon into a pile warehouse. This Court

emphasized that the plaintiffs were "engaged in the types of duties that longshoremen perform in transferring goods between ship and land transportation." 444 U.S. at 81. Performing traditional longshoring work is critical to coverage under the LHWCA. In addition, this Court reemphasized that employees involved in land transportation are not covered by the LHWCA. 444 U.S. at 83.

The present situation falls squarely within the direction provided in Herb's Welding, Caputo, and Pfeiffer. Robert Goode was injured while performing maintenance on machinery which was used solely for braking railroad cars as they moved into the terminal. Until the unloading process had been completed, the coal was still in land transportation and

stipulated that the plaintiffs were
"engaged in the types of duties that
longshoremen perform in transferring
goods between ships and land
transportation." 444 U.S. at 811.
Performing traditional longshoremen work
is critical to coverage under the LHWCA.
In addition, this Court emphasized that
employees involved in land transportation
are not covered by the LHWCA. 444 U.S.
at 811.

The present situation falls
squarely within the direction provided in
NLRB v. Bell, 448 U.S. 723, 731 (1980),
Robert Goetz was injured while performing
maintenance on machinery which was used
solely for breaking railroad cars as they
moved into the terminal. Until the
refueling process had been completed, the
coal was still in land transportation and

was not in the process of being loaded aboard a ship. The maintenance work performed by Goode was work traditionally performed by railroad workers and not by longshoremen. The Railroad wishes to ignore this distinction and apply the LHWCA to Goode. This would be the equivalent of not only extending LHWCA coverage to truck drivers who are bringing goods to a terminal for eventual shipment, but also to the mechanic who repairs the truck which breaks down while on the terminal.

The decision of the Virginia Supreme Court in this matter is entirely consistent with the decision of the Court of Appeals for the Fourth Circuit in Conti v. Norfolk & Western Ry. Co., 566 F.2d 890 (4th Cir. 1977). In Conti, the Fourth Circuit determined that the LHWCA

was not in the process of being tested
about a ship. The witnesses were
permitted by the court to testify
performed physical work and not by
testimony. The witness who was
ignoring this distinction and only the
last in order. This would be the
evidence of not only a witness that
coverage is that which was
provided under a contract. The witness
statement, but also to the witness who
testify the fact which would be the
on the witness.

The decision of the witness
should be in the witness's testimony
consistent with the testimony of the court
of appeals for the purpose of the
court. The witness's testimony is
the fact that the witness is the
fact that the witness is the
fact that the witness is the

should not be extended to two brakemen and a conductor-brakeman who are employed by the Railroad at the Lamberts Point Terminal. Each of the employees had been injured while moving railroad cars through the unloading process. In concluding that the workers were not covered by the LHWCA the Fourth Circuit stated:

It is clear that in the cases before us the occupation of the plaintiffs were not of a traditionally maritime nature, but on the contrary were those traditionally associated with railroading. Their tasks and responsibilities with respect to the unloading of the coal from the hopper cars would have been the same at an inland terminal as they were at Lamberts Point, and the sophisticated automation of the facilities at the latter terminal should not obscure the basic fact that the plaintiffs were engaged in unloading a coal train, not loading a vessel. We find nothing in the Amendments or the legislative history [to the LHWCA] to indicate that under the circumstances the Congress intended to transfer the

should not be extended to two persons
and a conductor-business who are employed
by the railroad at the transfer point.
Further, each of the employees had been
injured while working on the
transfer. The following persons, in
concluding that the workers were not
covered by the FELA, the Fourth Circuit
stated:

It is clear that in the cases
before us the composition of the
plaintiffs was not of a
traditionally unitary nature, but
on the contrary was composed
traditionally of individuals with
different interests, tasks and
responsibilities with respect to
the unloading of the coal from the
hopper cars. It would have been the
same if an injured transfer worker
were at transfer point, and the
plaintiff's association with the
facility, not the latter's transfer.
Should not coverage be denied here
just the plaintiff were engaged in
unloading a coal train, not loading
a vessel. We find nothing in the
language of the legislative
history (as the FELA) to indicate
that these circumstances are
excluded from coverage.

redress of such injured railroad workers from the FELA to the Longshoremen's Act.

566 F.2d at 895.

This decision of the Fourth Circuit is directly applicable to Goode and is in complete conformity with the decisions of the Supreme Court of Virginia and this Court. The only difference between the Fourth Circuit decision in Conti and the present case, is that Goode was a railroad maintenance employee who was repairing the equipment used to brake the railroad cars prior to unloading rather than a brakeman actually participating in the unloading process and using that equipment.

The Railroad argues in its Petition that "workers who maintain or repair equipment essential to loading vessels are maritime employees for LHWCA

Section 1 of the Virginia Railway
Act, 1908, Chapter 111, Section 1, reads as follows:

Sec. 1. To read as follows.

This decision of the Fourth Circuit
is directly applicable to the case and is
completely contrary with the decision of
the Supreme Court of Virginia and this
Court. The only difference between the
Fourth Circuit decision in *Smith* and the
present case is that *Smith* was a
railroad maintenance employee who was
operating the equipment used to break the
railroad cars prior to unloading rather
than a person actually participating in
the unloading process and using that
equipment.

The railroad argues in its petition
that "persons who maintain or repair
equipment essential to loading or unloading
cars are railroad employees for the purpose

purposes." See Petition at 23-27. Goode, however, was not repairing ship loading equipment; he was performing maintenance on railroad equipment which is used to brake railroad cars as they come onto the terminal. Such equipment is traditionally associated with railroading and is not unique to ship terminals. Conti, 566 F.2d at 895.

The decision of the Virginia Supreme Court is consistent with the decision of the Court of Appeals for the Fourth Circuit in Price v. Norfolk & Western Ry. Co., 618 F.2d 1059 (4th Cir. 1980). In Price, the Fourth Circuit found that a worker who was injured while performing routine maintenance on the "gallery" at the Railroad's grain elevator complex at Sewells Point was a maritime employee. The grain is loaded

proposed. The petition of 11-21-1911, however, was not repeated and existing equipment, as was proposed, was maintained on railroad equipment which is used as trucks without cars as they come onto the terminal. Such equipment is traditionally associated with railroading and is not unique to ship terminals. Civil. 1911 1-21 at 892.

The decision of the Virginia Supreme Court is consistent with the decision of the Court of Appeals for the Fourth Circuit in Wade v. Hollister, 1911 1-21 1911 (4th Cir. 1911). In Wade, the Fourth Circuit found that a worker who was injured while performing routine maintenance on the "galleys" of the railroad's train was an employee. The train is loaded

onto ships by a conveyor belt system housed in a structure called the gallery. The gallery belt system was used only for loading and unloading vessels. 618 F.2d at 1060-61. The Court concluded that the worker was involved in the maintenance and repair of longshoring machinery which was essential to the movement of cargo. 618 F.2d at 1061. In other words, the worker was performing traditional longshoring tasks in connection with the loading or unloading of cargo. Citing Conti, the Fourth Circuit in Price implicitly recognized that if the worker had been injured while repairing railroad equipment and not loading equipment, the LHWCA would not apply. 618 F.2d at 1062.

This Court has recognized that there must be a boundary to coverage under the LHWCA. See Herb's Welding, 470

into ships by a conveyor belt system housed in a structure called the gallery. The gallery belt system was used only for loading and unloading vessels. At 10:00-01, The Court concluded that the worker was involved in the maintenance and repair of longshore machinery which was essential to the movement of cargo. At 10:01-02, In other words, the worker was performing traditional longshore tasks in connection with the loading or unloading of cargo. Citing Longshore, the Puerto Rico District in Eliz explicitly recognized that if the worker had been injured while repairing railroad equipment and not loading equipment, the LNUCA would not apply. At 10:03-04, This Court has recognized that there must be a substantial contribution to the LNUCA. See Harbo's Holdings, 470

U.S. at 426-27. Nacirema Operating Co. v. Johnson, 396 U.S. 212, 223-24 (1969). In Herb's Welding, Caputo, and Pfeiffer, this court established that line. If a worker is performing traditional longshoring work and is involved in moving cargo between ship and land transportation, the worker will fall within LHWCA coverage. Conversely, if a worker is not performing traditional longshoring work or is not involved in moving cargo between ship and land transportation, the worker is not covered by the LHWCA. The line established in these cases has not been violated by the Supreme Court of Virginia in not extending LHWCA coverage to Goode. Goode, a railroad employee, was performing maintenance to equipment which is unique to railroad operations and

U.S. 419-27. Hackman, Gregory, Co.
T. Johnson, 306 U.S. 212, 222-23 (1939).
In Harris v. United States, 332 U.S. 106, 112 (1947).
then court established that line. If a
worker is performing traditional
transporting work and is involved in
moving cargo between ship and land
transportation, the worker will fall
within LMRCA coverage. Conversely, if a
worker is not performing traditional
transporting work or is not involved in
moving cargo between ship and land
transportation, the worker is not covered
by the LMRCA. The line established in
these cases has not been violated by the
Supreme Court of Virginia in not
extending LMRCA coverage to Google.
Google, a railroad employee, was
performing maintenance in equipment which
is unique to railroad operations and

found throughout the railroad system. The work Goode was performing is not traditional longshoring work but is traditional railroad work. Also, the equipment Goode was working on is used to brake railroad cars as they come onto the terminal; it is not ship loading equipment. Goode was not involved in ship loading activities or in moving cargo between ship and land transportation, but in traditional railroad activities, and therefore, is covered by FELA as opposed to LHWCA. The only factor which brings up the issue of LHWCA coverage is that Goode was performing maintenance to the railroad equipment at the Lambert's Point Terminal. LHWCA coverage is not even an issue for the same class of railroad employee performing the same work at

found throughout the railroad system. The very goods are, however, in not traditional transporting work but in traditional railroad work. Also, the equipment goods are working on in need to make railroad cars as they come onto the terminal. It is not ship loading equipment. Goods are not involved in ship loading activities or in moving cargo between ship and land transportation, but in traditional railroad activities, and therefore, is covered by FELA as opposed to LMRCA. The only factor which brings up the issue of LMRCA coverage is that goods are performing maintenance on the railroad equipment at the Lambert's Point Terminal. LMRCA coverage is not even an issue for the vast class of railroad employees performing the same work as

another Norfolk and Western facility. This single factor is not sufficient to take Goode out of the FELA scheme and place him under LHWCA. Robert Goode is not a maritime employee under the LHWCA and the decision of the Virginia Supreme Court to this affect is consistent with the decisions of this Court and the Court of Appeals for the Fourth Circuit.

B. Railroad workers are adequately protected by FELA.

As a railroad worker, Goode has an adequate means of redress for his injuries under FELA. The FELA has been the equivalent of a compensation statute since 1908. It has consistently been viewed as remedial in nature. Hoepfner v. Northern Pac. Ry. Co., 61 F. Supp. 819 (D.C. Mont. 1945). It has worked well, and has not been under attack for

11
The... and... facilities...
This... factor is not sufficient to
take... out of the... scheme and
place him under... Robert... is
not a... employee under the...
and the... of the... scheme
over to this... is... with
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... and ...

inadequacy by either the workers protected by the statute or the railroads. Even though FELA is a "jury trial" system rather than a "no-fault" compensation system, workers are receiving adequate compensation for on-duty injuries. When LHWCA was amended in 1972, the focus was on workers who passed into and out of the LHWCA system and into inadequate state systems, and not on the alternative FELA system. As such, there is no policy reason to extend LHWCA beyond the limits already established so as to include railroad workers like Goode.

CONCLUSION

For the above stated reasons, the Respondent, Robert T. Goode, Jr., prays that the Petition for a Writ of

independence by either the workers
protected by the statute or the
unions. Even though this is a "jury
trial" system rather than a "no-fault"
compensation system, workers are
receiving adequate compensation for on-
the-job injuries. When LNUA was amended in
1971, the focus was on workers who passed
into and out of the LNUA system and for
inadequate notice systems, and not on the
alternative this system. As such, there
is no policy reason to extend LNUA
beyond the limits already established so
as to include retired workers like
Cohen.

CONCLUSION

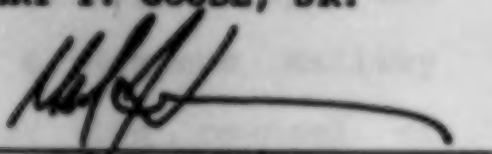
For the above stated reasons, the
Respondent, Robert T. Good, Jr., prays
that the petition for a writ of

Certiorari of the Petitioner, Norfolk and
Western Railway Company be denied.

Respectfully submitted,

ROBERT T. GOODE, JR.

By



Of Counsel

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(804) 625-1214

Consent of the Railroad, Norfolk and
Western Railway Company be denied.
Respectfully submitted,

ROBERT F. GOODE, JR.

By _____
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that I have served three (3) copies of this Brief in Opposition to Writ of Certiorari upon the Petitioner, Norfolk & Western Railway Co., at the office of its counsel of record, Edward L. Oast, Jr., Williams, Worrell, Kelly and Greer, P.C., 600 Crestar Bank Building, Norfolk, Virginia 23510, pursuant to the requirements of Rules 28 and 33 of the Rules of the Supreme Court of the United States, by depositing same in a United States mail box, with first class postage prepaid, addressed to Petitioner as set forth above, on or before August 19th, 1988.

I further certify that I am a member of this Court, and that all

STATEMENT OF WITNESS

I hereby certify that I have taken
true copies of this trial in
opposition to this of testimony upon the
testimony. Witness is a member of the
Co., at the office of the counsel of
counsel. Edward J. O'Connell, Jr., William
Wheeler, Kelly and O'Connell, 100
Clermont Street Building, Norfolk, Virginia
This, pursuant to the requirements of
law, is done in the face of the
counsel of the United States, in
opposition to the United States will
be with this clear postage stamps,
addressed to testimony as per facts
above, as of before signed by me, 1907
I further certify that I am a
member of this Court, and that all

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parties required to be served have been
served on or before August 19TH,
1988



Richard J. Tavss
Of Counsel for Respondent

Deposition upon oral examination of ROBERT T. GOODE, JR., taken on behalf of the Defendant, before Joy J. Gossett, a Notary Public in and for the Commonwealth of Virginia, taken pursuant to Notice, commencing at 11 a.m., on the 27th day of June, 1986 at the office of Williams, Worrell, Kelly & Greer, 600 United Virginia Bank Building, Norfolk, Virginia; and this in accordance with the Rules of the Supreme Court of Virginia, 1950, as amended.

* * * * *

(Whereupon, the witness was sworn.)

ROBERT T. GOODE, JR.,
called as a witness, having been
first duly sworn, was examined
and testified as follows:

Deposition taken at the residence of
Walter J. Brown, Jr., taken on behalf of the
Government, before J. H. Brown, a Notary
Public, in and for the Commonwealth of
Virginia, dated and signed by the Notary
on the 17th day of June, 1918, at the office of the
Notary, in the City of Washington, D.C., and this
deposition is a true and correct copy of the
deposition taken on the 17th day of June, 1918,
at the office of the Notary, in the City of
Washington, D.C., and this deposition is a true
and correct copy of the deposition taken on the
17th day of June, 1918, at the office of the
Notary, in the City of Washington, D.C.

Witness my hand and the seal of my office
this 17th day of June, 1918.

Walter J. Brown, Jr.,
Notary Public,
City of Washington, D.C.

EXAMINATION:

BY MR. RICHARDSON:

Q Mr. Goode, my name is John Richardson, and I represent the railroad in this matter.

If there are any questions you don't understand, tell me, and I will try to make them

Q Okay. That's after three months in '72. Was that nothing to do with the employment at the railroad? You were just looking for a better job; is that it?

A That's correct.

Q How long were you a police officer?

A Six years and ten months.

Q Just patrolman or --

A Yes.

EXHIBITATION

BY MR. RICHARDSON:

Q Mr. Gable, my name is John Richardson, and I represent the railroad in

this matter.

Q If there are any questions you don't understand, tell me, and I will try to make them . . .

...

Q Okay. Just a few more questions. In 1935, was there anything to do with the employment at the railroad? You were just looking for a better job, is that right?

A That's correct.

Q How long were you a police

officer?

A Six years and six months.

Q Last question or --

A Yes.

Q And why did you leave the police department?

A To come back to the railroad.

Q Any particular reason or just tired of being a police officer?

A Tired of being a police officer.

Q When did you come back to work?

A January 19th, 1979.

Q Okay. Did you go back to B & B department?

A No.

Q Tell me what you were employed as that time.

A I went into the motive power department.

Q And have you been in the motive power department from then on?

A Yes.

Q To the present day?

Q And why did you leave the police
department?
A To come back to the railroad.
Q Any particular reason for the
change of being a police officer?
A Yes, of being a police officer.
Q When did you come back to work?
A January 1974, 1974.
Q Now, did you work for a 12
month?

Department
A Yes.
Q Tell me what you was assigned to
that time.
A I went into the police power
department.
Q And what was your job in the police
power department from then on?
A Yes.
Q At the present day?

A Yes, sir.

Q Tell me a little bit about the motive power department. What is its job primarily?

A What is my job?

Q Let's talk about the department first.

A Basically to run the east end of the railroad.

Q Okay. Is there equipment that the motive power department is particularly responsible for?

A Yes, sir.

Q Tell me about that equipment they are responsible for.

A The thaw sheds, the pushers, the barneys, the dumpers, the conveyer belts.

Q It is fair to say they are responsible for everything on the railroad east of the thaw sheds?

A Yes, sir.

Q Tell me a little bit about the
active house department. What is its job
responsibility?

A That is my job.

Q Tell a little about the department.

That.

A Basically to run the house and of
the railroad.

Q Okay. Is there equipment that
the active house department is particularly
responsible for?

A Yes, sir.

Q Tell me about that equipment that
the department has?

Q The the house, the house, the
house, the house, the house, the house.

Q It is felt to be that the
responsible for everything of the railroad
part of the house.

A Including the thaw shed.

Q Is that where their line sort of stops and comes towards the dumpers?

A No, not really, because we work on equipment at Portlock.

Q What kind of equipment do you work on at Portlock?

A Forklifts, railroad engines.

Q Do you do that at Lambert's Point also?

A Yes, sir.

Q Okay. If you had to say what motive power mainly dealt with on a day-to-day basis, would you say the equipment in the coal loading system from the thaw shed to east?

A No, we work on all of the equipment.

Q Okay. And -- but I am talking about -- do you understand my question?

Q Including the time spent in the field, how long did it take you to complete the work on the equipment at Fort Belvoir?

A It took about three weeks to complete the work on the equipment at Fort Belvoir.

Q What kind of equipment was it?

A It was a piece of equipment used for testing the performance of the equipment at Fort Belvoir.

Q Do you do that at Fort Belvoir?

A Yes, sir.

Q Now, if you had to say what the most serious difficulty was in doing this work, what would you say the equipment is?

A The most serious difficulty was the fact that the equipment was old and it was difficult to get it to work properly.

Q Now, did you find any other equipment at Fort Belvoir?

A Yes, sir.

I am saying, does the motive power department primarily work on the equipment in the coal loading process from the thawing shed to east? Is that your primary responsibility?

A No.

Q Do you spend as much time working on the forklifts as you do the coal loading equipment?

A Yes, sir.

Q Okay. You spend more time working on that stuff like railroad engines and forklifts as you do on the coal loading equipment?

A I would say more time spent on the forklifts and thaw sheds.

Q Okay. More time spent on forklifts than thaw sheds?

A No, and thaw sheds.

I am saying, then, the motive
power department is primarily with the
equipment in the coal loading process. This
the thinking about the matter. Is that your
primary responsibility?

Q. Now, on the spot as you are working
on the facilities as you do the roll-loading
equipment?

A. Yes, sir.
Q. Now, you are working on the roll-loading
equipment as you do the roll-loading
and equipment as you do the roll-loading
equipment?

A. I would say that the steps on
the facilities and the work.
Q. Now, you are working on the roll-loading
equipment as you do the roll-loading
equipment?

A. Yes, and that would be the work.
Q. Now, you are working on the roll-loading
equipment as you do the roll-loading
equipment?

Q Okay. And barneys and pushers?

What I am getting at is, Mr. Goode, do you spend more time working on thaw sheds and that kind of stuff than you do forklifts and that kind of stuff?

MR. WILSON: Excuse me. John, if I could interject this. I am not certain it's clear what you are understanding -- what you are asking. If you defined what you consider to be unloading equipment --

MR. RICHARDSON: I thought I had.

BY MR. RICHARDSON:

Q Assume --

MR. WILSON: We might not accept your definition, but --

MR. RICHARDSON: I understand that.

BY MR. RICHARDSON:

Q I will lump everything that goes into the coal dumping and loading process

Gray. And Perrygo and Gushers?
What I am getting at is, Mr.
Gordon, do you spend more time working on
these things and that kind of stuff than you
do technical and that kind of stuff?

MR. WILSON: Because Mr. John, if
I could interpret this, I am not certain
it's clear what you are understanding --
what you are asking. If you defined what
you consider to be technical equipment --

MR. RICHMOND: I thought I had.
BY MR. RICHMOND:

O. Answer --
MR. WILSON: We might not accept

your definition, but --
MR. RICHMOND: I understand

that.
BY MR. RICHMOND:

O. I will keep everything that you
have the cost during and loading process

from the thaw sheds east, railroad east as coal equipment. Is that okay? Can you accept that? I am not asking you to agree, but for the purposes of my question, assume that.

Now, percentage-wise, if you can do this, tell me how much time the motive power department spends on the coal equipment as opposed to things like forklifts, railroad engines, and that kind of thing.

MR. WILSON: Before you answer it, I want to object to the form of the question. There has been no foundation laid to show that the coal unloading facilities start at the thaw shed. I think it would be -- we are assuming that for the purposes of the question.

from the fact that we, as a nation, are not yet
well equipped. In fact, many of our
schools are not even equipped with the
basic equipment of my generation. I think
that.

Now, perhaps when it comes to
the fact that we have not yet
been equipped with the basic
equipment of my generation, I think
that we are not yet equipped with the
basic equipment of my generation.

Now, perhaps when it comes to
the fact that we have not yet
been equipped with the basic
equipment of my generation, I think
that we are not yet equipped with the
basic equipment of my generation.

MR. RICHARDSON: Right. I understand that. I am not saying my definition is definitive.

I am trying to get an idea of how much time the motive power department spends on equipment such as the thaw shed, the barneys, the pushers, the dumpers, and what I would classify as coal loading or dumping equipment. Okay.

BY MR. RICHARDSON:

Q Can you answer that question?

A I am not sure.

Q Okay. Who would know that?

A I don't know that either.

Q Who is your supervisor?

A My immediate supervisor is Bobby Jones.

Q And who is his boss?

A Chain of command would be Arnold Meadows.

Q Head of B & B or motive power?

A No, assistant general foreman.

Q Okay. Let's keep going. Who is next?

A Dillard Bates or D. T. Bates.

Q What is his title?

A General foreman.

Q All right. Anybody higher?

A Bobby Edwards is assistant master mechanic.

Q Mr. Crowder then?

A Yes.

MR. WILSON: Is that Herb Crowder we are talking about?

MR. RICHARDSON: Yes.

BY MR. RICHARDSON:

Q He is the master mechanic, right, Mr. Goode?

A Yes.

1. The first of the three is the
2. The second of the three is the
3. The third of the three is the

4. The fourth of the three is the
5. The fifth of the three is the
6. The sixth of the three is the
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13. The thirteenth of the three is the

14. The fourteenth of the three is the
15. The fifteenth of the three is the
16. The sixteenth of the three is the
17. The seventeenth of the three is the
18. The eighteenth of the three is the

Q He is sort of in charge of the motive power department?

A Yes, sir.

Q Okay. Now, since you came back to work with the motive power department in January of 1979, what has been your job? What was your initial job in January of 1979?

A Line tender and helper.

Q What does that do? What do they do?

A Basically help the electricians and machinists.

Q Do what?

A Perform repair work.

Q On this kind of equipment we have been talking about earlier?

A On anything.

Q What else did you do?

Q. He is not at all capable of the

active power relationships

A. Yes, sir.

Q. Okay. Now, since you agree that

the work with the active power department in

January of 1973, that has been your job?

That was your initial job in January of

1973.

A. This transfer was made,

Q. When does that and when do you

not

A. Basically this was electricians

and technicians.

Q. So what?

A. Perhaps repair work.

Q. On this kind of assignment we have

been training about earliest.

A. As mentioned.

Q. What else did you do?

A Tied up ships on the pier.

Q Okay. Whenever a ship would come in or leave, y'all would tie and untie the ships?

A That's correct.

Q How long were you a line tender and helper?

A Three months.

Q Then what did you become?

A Machinist apprentice.

Q And that essentially means you work on all equipment that you were describing earlier? Is that what the machinist does?

A Yes, sir, works on cars, trucks, forklifts, railroad cars.

Q And how long were you apprentice?

A It's a four-year apprenticeship.

Q Have you moved up to a machinist yet?

A: I'd like to see the picture.

Q: Okay. Whenever a ship would come in or leave, I'd like to see the picture.

A: That's correct.

Q: Now, how many were you a line leader?

A: Three months.

Q: How many did you have?

A: I had one apprentice.

Q: What was that apprentice doing for you?

A: He was doing all the work that you were doing. He was doing all the work that you were doing.

Q: Yes, sir, when he came, I'd like to see the picture.

A: That's correct.

Q: And how many were you apprentice?

A: It's a four-year apprenticeship.

Q: How did you get up to a technician?

A Yes, sir.

Q When did that occur?

A I am not sure of the date.

Q All right. How long, a couple of years ago?

A Yes, sir.

Q And you are a machinist today?

A Yes, sir.

Q And I take it a machinist does the same thing a machinist apprentice does essentially?

A Yes.

Q Work on cars, trucks, forklifts, things like that?

A Yes, sir.

Q All right, just clarify something for me, Mr. Goode. Do you actually go to the car shop and work on cars, rail cars?

A I don't go to the car shop and work on cars.

A Yes, sir.

Q When did they occur?

A I am not sure of the date.

Q All right. Now how, a couple of years ago?

A Yes, sir.

Q And you are a machinist today?

A Yes, sir.

Q And I take it a machinist does the same thing a machinist apprentices does, is that right?

A Yes.

Q Work on cars, trucks, motorcycles, things like that?

A Yes, sir.

Q All right, just exactly working for me, is that so? To put screws on in the car body and work on cars.

Q Where do you work on rail cars?

A At the scale office, in the thaw shed, and in the barney pit, and sometimes the dumper.

Q When cars get stuck there or something, is that when you work on them?

A Yes, sir. And if something is wrong with the car, we work on it before it goes into the dumper.

Q When you work on a car, it's on the track between the thaw shed and the -- whatever the yard is where they go after being dumped?

A Sometimes they are not on the track.

Q What do you mean "sometimes"?

A Sometimes they are derailed, and we have to put them back on the track.

Q Where do you work on rail cars?

A At the scale office, in the train

shed, and in the baggage pit, and sometimes

the engine.

Q When cars get stuck there or

something is lost when you work on them?

A Yes, sir. And if something is

wrong with the car, we work on it before it

goes into the engine.

Q When you work on a car, is it on

the track between the two sheds and the

engine? The yard is where they go after

being damaged?

A Sometimes they are not on the

track.

Q What do you mean "sometimes"?

A Sometimes they are derailed, and

we have to get them back on the track.

Q Okay. It's generally out of necessity to keep the coal process running, is that fair to say?

A I guess so.

Q Okay. What I am getting at is, you just don't inspect cars, and you don't -- if you see something wrong that needs to be fixed, you don't stop the coal loading process to work on cars?

A It would depend on the severity of what needed to be fixed.

Q Okay. Is that something that happens on a regular basis?

A No.

Q Okay. So what do you do most of the time?

A Perform repair work on the equipment for the railroad.

Q Okay. All right, Mr. Goode, tell us what happened on the day you got hurt.

Q Okay. It's generally not
necessarily to keep the coal process running.
is that fair to say?
A I guess so.
Q Okay. What I am getting at is,
you just don't expect cars, and you don't
-- if you see something wrong that needs to
be fixed, you don't stop the coal feeding
process to work on cars?
A If you'd depend on the severity
of what needed to be fixed.
Q Okay. Is that something that
happens on a regular basis?
A No.
Q Okay. So what do you do most of
the time?
A Perform repair work on the
equipment for the railroad.
Q Okay. All right, Mr. Gotsch, call
us what happened on the day you got hurt.

A Where do you want me to begin?

Q Let's start with when did you come on that day?

A At 7 a.m.

Q Is that your typical shift, 7 to 3?

A Yes, sir.

Q And when you came on, who do you go to for direction on what to do that particular day?

A Report at the lunchroom at the motive power building.

Q Where is the motive power building?

A Lambert's Point.

Q I am not being cute. I am trying to get questions that are relevant to this case. If you don't like the questions I ask, that is something you discuss with your counsel.

Q. What do you want to be doing?

A. I want to be a doctor.

Q. When will you be a doctor?

A. In 1955.

Q. Is that your typical shift?

A. Yes, sir.

Q. And when you come in, what do you

do for the first few days?

A. I report to the hospital at the

hospital power building.

Q. Where is the hospital power

building?

A. In the power plant.

Q. I am not being clear. I am trying

to get questions that are relevant to this

case. If you don't like the questions I

ask, that is something you discuss with your

I expect courtesy, and I am not giving you trouble, and I expect the same in return.

MR. WILSON: I might interject. I don't think he is doing that. He is trying to be responsive but --

MR. RICHARDSON: I don't think I am harassing him.

MR. WILSON: No, and I don't think he is intentionally doing anything to you. I am sorry you took it like that.

Bob has been instructed the answer the questions as you ask them, and if you ask him which end, he will get to it. He is not doing that intentionally.

You shouldn't take it that way, John. You are too sensitive.

BY MR. RICHARDSON:

Q Do you understand my question, Mr. Goode?

I expect, perhaps, that I am not
giving you trouble, and I expect the same in
return.

MR. WILSON: I don't believe
I don't think he is doing that. I am
trying to be responsive but
MR. RICHMOND: I don't think I

am bothering him.
MR. WILSON: No, and I don't
think he is intentionally being evasive.
You: I am sorry you see it that way.
But has that frustrated you
about the questions he has asked and if
you ask him when and he will not do it,
he is not doing that intentionally.

You shouldn't take it that way.
John: You are not sensitive.
BY MR. RICHMOND:

To you, understand my question
is simple.

A Yes, sir.

Q All right. Where with respect to the Elizabeth River is the motive power building? Is it down there near the piers or up near the claim department and superintendent's office?

A Approximately 150 yards east of the Elizabeth River.

Q Okay. Near the piers?

A Near them.

Q Okay. You report there. Who tells you what to do, if anybody?

A Bobby Jones.

Q Okay. What did he tell you to do on the day you were hurt?

A To go the south dumper and check and repair the retarders.

Q Okay.

A Retarders are what stops the coal cars.

A Yes, sir.

Q All right. Where with respect to

the Elkhorn River is the motive power
belonging to it down there near the place
of up past the main department and

approximately a mile?

A Approximately 150 yards east of

the Elkhorn River.

Q Okay. Near the place?

A Near there.

Q Okay. You report today who

tells you what to do, is anybody?

A Bobby Jones.

Q Okay. What did he tell you to do

on the day you were hurt?

A To go the south gutter and check

and repair the rollers.

Q Okay.

A Yesterday was when across the coal

mine.

Q They act like a cushion or something when they unload it?

A Braking system.

Q Is it after they have been unloaded or while they are being unloaded or prior to being dumped?

A Prior.

Q Okay. They are on the dumpers themselves?

A Yes, sir.

Q Tell me a little bit about how the retarders play a role in the dumping process.

A They stop the coal cars in place.

MR. WILSON: Before you answer that, I object to the form of the question. You are assuming they are involved in the dumping process.

MR. RICHARDSON: Sure. I understand.

MR. WILSON: Go ahead and answer it, Bob.

BY MR. RICHARDSON:

Q Can you tell me when coal cars come to the dumper, what does the retarder do?

out to look at retarders for maintenance problems? Is this typical of --

A Yes, sir.

Q And how often do you have to replace the sword and pins?

A I don't know. Somethings you have to replace them, and sometimes you don't.

Q Can you go years without replacing them? Is this something you do every month or every six months or --

A You check them more often, and I am not sure the length of time they last.

THE WITNESS: He heard the witness

11. Now.

BY MR. WATKINS:

Q Can you tell us when that call
came to the house, what does the witness

Q Now to look at the witness for the witness
proceeds to this typical of --

A Yes, sir.

Q And how often do you have to
replace the wires and plates?

A I don't know. Sometimes you
have to replace them, and sometimes you

don't.

Q Can you tell me how often
replacing them? Is this something you do

every month or every six months or --

A You check these wires often, and I
am not sure the length of time they last.

Q Okay. You weren't surprised to see they needed to be replaced?

A No, sir.

Q Okay. Once you saw that, what did you decide to do?

A Contacted Bobby Jones and told him what the situation was, and he said to replace them.

Q Okay. And is this a big job?

A Yes, sir.

Q Does it require shutting down the dumpers?

A Yes, sir.

Q Okay. Was the dumper shut down during this time?

A Yes, sir.

Q There wasn't any coal being loaded?

A No, sir.

Q. Okay. You haven't mentioned to

me they needed to be registered?

A. Not at all.

Q. Okay. Once you saw that, would

did you decide to do?

A. I contacted Bobby Jones and told

him that the situation was, and he said to

register them.

Q. Okay. And is this a very good

A. Yes, sir.

Q. Does it require anything from the

company?

A. Yes, sir.

Q. Okay. Was the design that down

during this time?

A. Yes, sir.

Q. There wasn't any cost, being

loaded?

A. No, sir.

Q That is when y'all do the maintenance on the dumpers is when it's down like that?

A Yes, sir.

Q Okay. What does the -- tell me a little bit about how you go about replacing these things.

A You have to have an acetylene and oxygen torch, and you take the pins, which are actually bolts, out of the linkage, and you heat up the keeper strap that is over top of one of the pins, that is a pin, not a bolt. You bend it out of the way, and you take the pin out, and usually or supposedly that is all that has to be done. You take the pin out and take the sword out.

On this particular day the bushing that the pin goes through was broke, and I had to take the acetylene and oxygen torch and push the bushing block off. Then

Q That is when I'll get the
maintenance on the outside of the door
like that.

A Yes sir.
Q Okay. What does the - tell me
little bit about how you go about replacing
these things.

A You have to have an acetylene and
oxygen torch, and you take the pin, which
are actually bolts, out of the linkage, and
you heat up the bottom step. That is over
top of one of the pins. This is a pin, not a
bolt. You heat it out of the way, and you
take the pin out, and usually, or supposedly
that is all that has to be done. You take
the pin out and take the second one.

On this particular day the
boasting that the pin does through was made,
and I had to take the acetylene and oxygen
torch and heat the boasting block off. Then

I had to go back to the shop and get a new bushing block and new pin and come back to the dumper to replace it.

Q Okay. How much time did it take place? It is getting close to noon?

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY
OF NORFOLK

ROBERT T. GOODE, JR.,

Plaintiff,

v.

AT LAW NO. L86-355

NORFOLK AND WESTERN
RAILWAY COMPANY,.

EXHIBIT D3
/s/ JWW
Judge

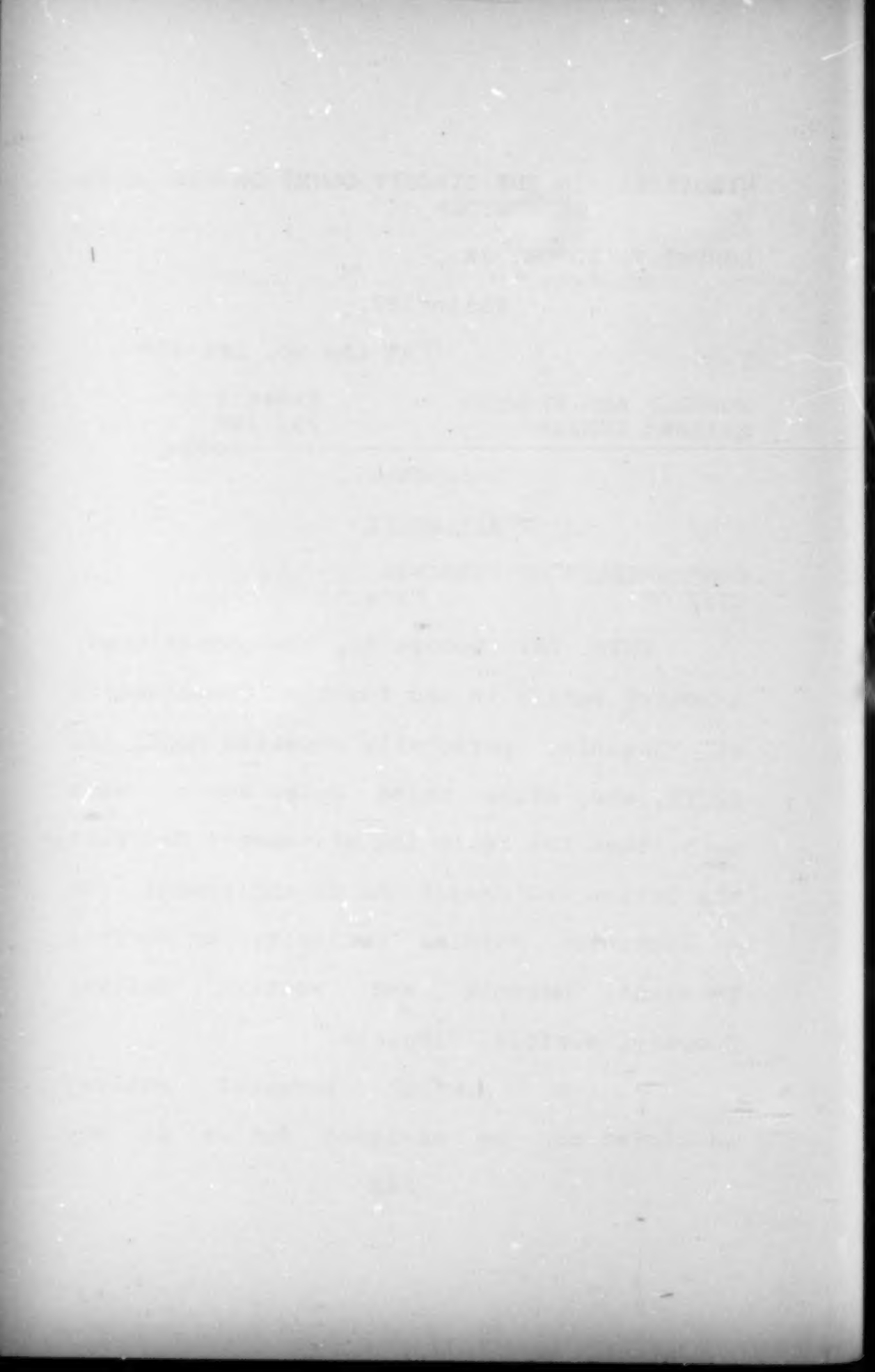
Defendant.

AFFIDAVIT

COMMONWEALTH OF VIRGINIA
CITY OF , to-wit:

THIS DAY, before me, the undersigned,
a Notary Public in and for the Commonwealth
of Virginia, personally appeared RONEL LEE
CROFT, who, after being duly sworn, made
oath that the following statements describe
the duties and conditions of employment for
a machinist holding seniority on Norfolk
Terminal, Norfolk and Western Railway
Company, Norfolk, Virginia.

1. A Norfolk Terminal railway
machinist may be assigned duties at any



geographical point on the Terminal. As an example, machinists work at Portlock Yard (approximately 6 miles from Lamberts Point Yard).

2. All machinists on Norfolk Terminal work from a common seniority list and may change jobs at will, based on their seniority standing on this last.

3. Machinists perform jobs on Norfolk Terminal ranging from the repair and maintenance of pier machinery; to the repair and maintenance of railroad locomotives; to the repair of railroad cars; to the repair of hydraulic braking systems; to the repair of bridge raising mechanisms.

4. Norfolk Terminal machinists perform these duties at various geographic locations ranging from the Elizabeth River Piers, the 38th Street car shops and the locomotive round house, all at Lamberts

geographical point on the terrain. In an
example, the distance from the London
regionally - 6 miles from London - is
about 12 miles.

1. The distance from the London
regionally is 12 miles. The distance from
the London regionally is 12 miles. The
distance from the London regionally is 12 miles.

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regionally is 12 miles. The distance from
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3. The distance from the London
regionally is 12 miles. The distance from
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distance from the London regionally is 12 miles.
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The distance from the London regionally is 12 miles.
The distance from the London regionally is 12 miles.

Point Yard; to Portlock Yard (approximately 5 miles from Lamberts Point Yard); to Bridge #7 (approximately 7 miles from Lamberts Point Yard); to Crewe, Virginia (approximately 125 miles from Lamberts Point yard).

5. Machinists assigned to the Motive Power Department at the Pier end of Lamberts Point Yard have job assignments of working on Pier machinery, both over the water and in the shop; also, work assignments involved with railroad cars and railroad equipment, prior to the unloading of the cars.

Examples of some of these assignments:

- a. the repair of railroad cars;
- b. the rerailing of derailed railroad cars;
- c. the repair and maintenance of pushers (small electric locomotives);
- d. the repair and maintenance of the Barney;
- e. the repair and maintenance of retarders; and
- f. the release of handbrakes on railroad cars.

Point Yard to Portico Yard (approximately
2 miles from Lancaster Point Yard) to Point
17 (approximately 7 miles from Lancaster
Point Yard) to Cross Virginia
(approximately 12 miles from Lancaster Point
Yard).

1. Work is assigned to the motive
power equipment at the time and of Lancaster
Point Yard from job assignments of work
on flat machinery, both over the water and
in the shop when work assignments involved
with railroad cars and related equipment.
Prior to the completion of the work
Examples of work of these assignments:

- a. The repair of railroad cars.
- b. The detailing of detailed
equipment.
- c. The repair and maintenance of
equipment (small electric
motors).
- d. The repair and maintenance of the
equipment.
- e. The repair and maintenance of
equipment and
the repair of breakdown on
railroad cars.

6. Retarders, such as those in use on the south side dumper at Lamberts Point Yard, are in use throughout the Norfolk and Western Railroad system and are common to all railroads.

7. The purpose and function of such retarders is to stop railroad cars.

8. The function of the retarders on the south side dumper is to stop railroad cars prior to the cars being unloaded.

9. The conveyor belt system used to load coal on ships begins after the unloading of railroad cars at the southside dumper.

10. After a car is unloaded it continues its cycle back to the coal mines to be loaded again, by continuing up a raised track, and is then returned by gravity to an empty car yard.

1. The purpose and function of the
the south side of the river at
yard, the in the vicinity of the
Western Railroad station and the
all buildings.

2. The purpose and function of the
the south side of the river is to
the south side of the river is to
the south side of the river is to
the south side of the river is to

3. The purpose and function of the
the south side of the river is to
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the south side of the river is to
the south side of the river is to

4. The purpose and function of the
the south side of the river is to
the south side of the river is to
the south side of the river is to
the south side of the river is to

11. Different crafts of employees work beside the track on which the south side retarder is located. As an example, railroad brakemen work beside this track, and they are geographically closer to the water and piers than is a machinist working on a retarder.

12. Machinists working on the pier end of the yard are worked side by side, over land, with railway maintenance of way employees:

- a. rerailing derailed railroad cars;
- b. breaking up frozen coal from railroad cars.

13. As a railroad machinst I am required to pay money to the Federal Retirement Board.

14. As a railroad machinist I am eligible for retirement under the Federal Railroad Retirement system.

15. As a railroad machinist I am eligible to receive Railroad Retirement Board unemployment benefits when furloughed or dismissed from this job.

16. As a railroad machinist I am eligible to receive Railroad Retirement Board sickness benefits when I miss time from work due to illness or a disabling injury at home.

17. My work contract is negotiated under the Federal Railway Labor Act.

18. My rights to hearings, and appeals rights of discipline imposed by the Norfolk and Western Railroad, are rights under the Federal Railway Labor Act.

19. The railroad cars repairs by the machinists are used in interstate commerce.

20. The safety standards for railroad cars stopped by the retarders on the south

side, Pier 6, are set by Federal regulations, the Safety Appliance Act.

21. A machinist's work on Norfolk Terminal, with the exception of work on machinery that handles coal after the coal cars are unloaded, is in no way even remotely related to the loading or unloading of ships, nor is this work on piers, nor is this work over water. This work deals with machinery used in the repair of coal cars, the repair of locomotives, vehicles, bridges and track machinery such as retarders.

/s/ Ronel Lee Croft

Sworn and subscribed to before me, in the City of Norfolk, State of Virginia, this 11th day of September, 1986.

/s/ Martha Early

My commission expires: 10-10-88

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY
OF NORFOLK

ROBERT T. GOODE, JR.,

Plaintiff,

v.

AT LAW NO. L86-355

NORFOLK AND WESTERN
RAILWAY COMPANY,.

EXHIBIT D4
/s/ JWW
Judge

Defendant.

AFFIDAVIT

COMMONWEALTH OF VIRGINIA
CITY OF , to-wit:

THIS DAY, before me, the undersigned,
a Notary Public in and for the Commonwealth
of Virginia, personally appeared Raymond D.
Wethington, who, after being duly sworn,
made oath that the following statements
describe the duties and conditions of
employment for a machinist holding seniority
on Norfolk Terminal, Norfolk and Western
Railway Company, Norfolk, Virginia.

1. A Norfolk Terminal railway
machinist may be assigned duties at any

1

MEMORANDUM FOR THE RECORD

SUBJECT: [Illegible]

DATE: [Illegible]

TO: [Illegible]

FROM: [Illegible]

REFERENCE: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]

4. [Illegible]

5. [Illegible]

6. [Illegible]

7. [Illegible]

8. [Illegible]

9. [Illegible]

10. [Illegible]

11. [Illegible]

12. [Illegible]

13. [Illegible]

14. [Illegible]

15. [Illegible]

geographical point on the Terminal. As an example, machinists work at Portlock Yard (approximately 6 miles from Lamberts Point Yard).

2. All machinists on Norfolk Terminal work from a common seniority list and may change jobs at will, based on their seniority standing on this list.

3. Machinists perform jobs on Norfolk Terminal ranging from the repair and maintenance of pier machinery; to the repair and maintenance of railroad locomotives; to the repair of railroad cars; to the repair of hydraulic braking systems; to the repair of bridge raising mechanisms.

4. Norfolk Terminal machinists perform these duties at various geographic locations ranging from the Elizabeth River Piers, the 38th Street car shops and the locomotive round house, all at Lamberts

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Point Yard; to Portlock Yard (approximately 5 miles from Lamberts Point Yard); to Bridge #7 (approximately 7 miles from Lamberts Point Yard); to Crewe, Virginia (approximately 125 miles from Lamberts Point yard).

5. Machinists assigned to the Motive Power Department at the Pier end of Lamberts Point Yard have job assignments of working on Pier machinery, both over the water and in the shop; also, work assignments involved with railroad cars and railroad equipment, prior to the unloading of the cars.

Examples of some of these assignments:

- a. the repair of railroad cars;
- b. the rerailing of derailed railroad cars;
- c. the repair and maintenance of pushers (small electric locomotives);
- d. the repair and maintenance of the Barney;
- e. the repair and maintenance of retarders; and
- f. the release of handbrakes on railroad cars.

Point 1: To be done by the 1st of June
 2 miles from the 1st of June
 3 miles from the 1st of June
 4 miles from the 1st of June
 5 miles from the 1st of June
 6 miles from the 1st of June
 7 miles from the 1st of June
 8 miles from the 1st of June
 9 miles from the 1st of June
 10 miles from the 1st of June



Point 1: To be done by the 1st of June
 2 miles from the 1st of June
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 5 miles from the 1st of June
 6 miles from the 1st of June
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Point 1: To be done by the 1st of June
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 5 miles from the 1st of June
 6 miles from the 1st of June
 7 miles from the 1st of June
 8 miles from the 1st of June
 9 miles from the 1st of June
 10 miles from the 1st of June

6. Retarders, such as those in use on the south side dumper at Lamberts Point Yard, are in use throughout the Norfolk and Western Railroad system and are common to all railroads.

7. The purpose and function of such retarders is to stop railroad cars.

8. The function of the retarders on the south side dumper is to stop railroad cars prior to the cars being unloaded.

9. The conveyor belt system used to load coal on ships begins after the unloading of railroad cars at the southside dumper.

10. After a car is unloaded it continues its cycle back to the coal mines to be loaded again, by continuing up a raised track, and is then returned by gravity to an empty car yard.

2. The purpose of the test is to determine the effect of the test on the system. The test is to be conducted in a controlled environment. The test is to be conducted in a controlled environment. The test is to be conducted in a controlled environment.

3. The purpose of the test is to determine the effect of the test on the system. The test is to be conducted in a controlled environment. The test is to be conducted in a controlled environment. The test is to be conducted in a controlled environment.

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7. The purpose of the test is to determine the effect of the test on the system. The test is to be conducted in a controlled environment. The test is to be conducted in a controlled environment. The test is to be conducted in a controlled environment.

11. Different crafts of employees work beside the track on which the south side retarder is located. As an example, railroad brakemen work beside this track, and they are geographically closer to the water and piers than is a machinist working on a retarder.

12. Machinists working on the pier end of the yard are worked side by side, over land, with railway maintenance of way employees:

- a. rerailing derailed railroad cars;
- b. breaking up frozen coal from railroad cars.

13. As a railroad machinist I am required to pay money to the Federal Retirement Board.

14. As a railroad machinist I am eligible for retirement under the Federal Railroad Retirement system.

11. Station master of
work beside the track on which the south
side carter is located. As an engine
worked between work beside this track
and they are geographically closer to the
water and pier than is a machine working
on a wharf.

12. Machine working on the pier
end of the yard are worked side by side
over land, with railway maintenance of way
equipment.

13. Station master of
working of train from
collected data.

14. As a railway machine
required to pay money to the Federal

Government Board.
15. As a railway machine

eligible for retirement under the
Railroad Retirement Act.

15. As a railroad machinist I am eligible to receive Railroad Retirement Board unemployment benefits when furloughed or dismissed from this job.

16. As a railroad machinist I am eligible to receive Railroad Retirement Board sickness benefits when I miss time from work due to illness or a disabling injury at home.

17. My work contract is negotiated under the Federal Railway Labor Act.

18. My rights to hearings, and appeals rights of discipline imposed by the Norfolk and Western Railroad, are rights under the Federal Railway Labor Act.

19. The railroad cars repairs by the machinists are used in interstate commerce.

20. The safety standards for railroad cars stopped by the retarders on the south

11. As a railroad employee, I am
eligible to receive railroad retirement
benefits when I am discharged
or dismissed from this job.

12. As a railroad employee, I am
eligible to receive railroad retirement
benefits when I am discharged
or dismissed from this job.

13. My work contract is negotiable
under the Federal Railway Labor Act.

14. My right to bargain and
appoint agents of discipline imposed by the
Norfolk and Western Railroad are rights
under the Federal Railway Labor Act.

15. The railroad does not have the
right to use its internal security
measures.

16. The right standards for railroad
work imposed by the Interstate Commerce

side, Pier 6, are set by Federal regulations, the Safety Appliance Act.

21. A machinist's work on Norfolk Terminal, with the exception of work on machinery that handles coal after the coal cars are unloaded, is in no way even remotely related to the loading or unloading of ships, nor is this work on piers, nor is this work over water. This work deals with machinery used in the repair of coal cars, the repair of locomotives, vehicles, bridges and track machinery such as retarders.

In addition to the above, I attest that as Local Chairman (Labor Representative) representing machinists on Norfolk Terminal, the following:

A. I progress discipline appeals to my General Chairman through the Federal Railway Act.

side, pier 5, and by Federal
regulations, the Entry Appliance Act.
21. A machine's work on Norfolk
Terminal, with the exception of work on
machinery that handles coal after the coal
has at unloading, is in no way
remotely related to the loading or unloading
of ships, nor is this work on piers, nor is
this work over water. This work deals with
machinery used in the repair of coal cars,
the repair of locomotives, vehicles, bridges
and track machinery such as switches.
In addition to the above, it is noted
that an _____ Chairman _____
Representative _____ representing machinery on
Norfolk Terminal, the following:
A. I propose discipline should be
by General Chairman through the Federal
Railway Act.

B. All benefits such as unemployment and sickness benefits are payable through the Federal Railway Retirement Board.

C. All machinists on Norfolk Terminal that I represent are treated as railway employees, except when one is injured at the east end of Lamberts Point Yard (the River End).

D. All machinists, in all parts of the Terminal, work under work rules set by the Railroad for all railroad employees. Also, they all work under safety rules set by the Railroad for all railroad employees on all parts of the Railroad system.

/s/ Raymond D. Wethington

Sworn and subscribed to before me, in the City of Norfolk, State of Virginia, this 3rd day of September, 1986.

/s/ Martha Early

My commission expires: 10-10-88

HERBERT R. CROWDER, called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

CROSS EXAMINATION

BY MR. WILSON:

THE COURT: Well, they ride it only for the purpose of hitching a ride? Why would they do that?

THE WITNESS: When a car that has been put on the dumper that's misclassified -- there are hundreds of classes of coal -- and they have to get it off, or we have a mechanical breakdown that we can't dump that car and have to get rid of it so we can repair it at the facility. So I can't say that it never happens, but it's so remote that I can't

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remember the last time it was done.

BY MR. WILSON:

Q. But you do agree that a trainman is customarily working in an area closer to the water than this retarder that you were speaking about; is that correct?

A. He's assigned to work closer to the water than the retarders, yes.

Q. What is his job?

A. That trainman?

Q. Yes, sir.

A. he ensures that the cars got off the dumper and he classifies cars as they come off the dumper. A for instance, if you may, is we classify cars coming off the dumper between 100-ton and a 70-ton car and different railroad's ownership.

BY MR. WILSON:

remains the last time it was done.

BY MR. WILSON:

Q. Now you do agree that a person is necessarily working in an area where the work, even this evidence that you were appearing around the night court?

A. He's entitled to work where he wants to work.

Q. What is his job?

A. That's irrelevant.

Q. Yes, sir.

A. He is entitled to work where he wants to work and he is entitled to work where he wants to work. If you come off the subject, I am not interested. If you say, is he entitled to work where he wants to work, I am not interested. I am not interested in his work. I am not interested in his work. I am not interested in his work.

BY MR. WILSON:

Q. What does BC stand for?

A. From B belt to C belt.

Q. It's a belt change house; is that what it is?

A. Yes, sir. You don't change belts, so that we are talking the same terms. It's where the coal transfers from one belt to another belt.

Q. Okay. If you will, why don't you draw a circle now where the dumper operation is where the coal is dumped from the car at the retarders.

A. (The witness complied.)

Q. All right. And what are these lines that run between these two red circles?

A. That's your B belt. B and 1 belt.

THE COURT: Underground, aren't they?

Q. What does he mean by that?

A. From E back to D.

Q. Is it a back change again, is that

what it is?

A. Yes, Sir. You don't change

points, we just we are talking the same

terms. It's where the real fixations from

one point to another point.

Q. Okay. Is that all, are there any

more points now where the danger operation

is where the cost is changed from one car to

the next one.

A. (The witness replied.)

Q. All right. And what are these

places that you between them, are they

clear?

A. There's your A, B, C, D, and E.

Q. All right.

A. Yes, Sir.

Q. All right.

A. Yes, Sir.

Q. All right.

A. Yes, Sir.

THE WITNESS: Partially
underground and partially above.

BY MR. WILSON:

Q. If you will, why don't you draw
an arrow between those two circles for us.

A. (The witness complied.)

Q. Now show me where the coal goes
when it changes from one belt at the BC
house onto another belt.

A. (The witness complied.)

Q. And what is its final destination
there?

DILLARD BATES, called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. WILSON:

Q. Allright, sir. Don't they work on a device called a pusher, which has been described as a small electric locomotive, prior to the unloading of the cars?

A. Yes. The pusher at the barney piers, yes.

Q. Don't they work on the repair and maintenance of the barney which is a device used to push the cars up the incline before the dumper?

A. Yes, they do.

WILLIAM LAYNE, called as a witness by
and on behalf of the defendant, having taken
first duly sworn, was examined and testified
as follows:

CHIEF EXAMINATION

BY MR. WILSON:

Q Allright, sir. Don't they work
on a device called a buzzer, which has been
described as a small electric device,
refer to the unloading of the cars?
A Yes, the buzzer is the device.

WILSON: Yes.

Q Don't they work on the buzzer and
assistance of the buzzer which is a device
used to push the cars up the incline before
the buzzer?

A Yes, they do.

Q. Don't the trainmen activate the barney, railroad trainmen?

A. No, sir. The railroad trainmen gives our dumper operators a signal that it is ready to pull and he actually pushes the button to pull the barney.

Q. So they participate in the process of signalling which causes the barney to be started?

A. Right. They have a green light down there. When he takes the retarders off a green light comes on. Then the barney comes.

Q. So machinists do work in and about railroad cars with the movement of railroad cars both before and after they are dumped?

A. Yes.

Q. We have discussed a place called the BC house.

Q. Now, the witness, relative to
the, railroad crossing
A. Yes, sir. The railroad crossing
gives the danger operator a signal that
it is ready to pull and he actually pushes the
button to pull the train.
Q. So they participate in the
process of signaling which causes the
train to be started?
A. Right. They have a green light
down there. When he takes the railroad
a green light comes on. Then the train
comes.
Q. So participants do work in the
about railroad cars with the movement
of railroad cars both before and after they are
disposed.
A. Yes.
Q. We have discussed a place called
the 10 miles.

A. Yes.

Q. And I understand that there are belts that run from the south side dumper to this BC house?

A. Yes.

Q. Does that belt have a designation?

A. The BC house?

Q. No. The belt itself. It is like B belt?

A. Yes. B and B1 belt, yes.

Q. So B belt goes from the south side dumper to the BC house?

A. Under normal operations, yes.

Q. And then the coal is dumped on another belt that goes from the BC house to the ships; is that correct?

A. That's correct.

Q. What is the designation of that belt from the ships to the BC house?

A. From the ship to the BC house?
Under normal operation, B belt would dump onto C belt. C belt would go down the pier, up through the loader.

Q. And that is when they put the coal in the ships, right?

A. No, sir. It then dumps onto D belt.

Q. So there is another belt involved?

A. Which is a belt going across out to your apron. It belts onto E belt.

Q. Is there a shoot at the back of the BC house where you can place coal?

A. There's a shoot at the back of the BC house?

Q. At the back of the BC house.

A. Yes. There is a cleanup place back there where the cleanup belts dump off and also a place back there where if you

A. From the ship to the B house
under normal conditions, the belt would
onto E level. The belt would go down the stairs
up through the ladder.

Q. And that is when they put the
coal in the bridge, right?

A. Yes, sir. It then drops onto B
level.

Q. So there is another "belt"
involved?

A. Which is a belt going across and
to your right. It falls onto E level.

Q. Is there a shoot at the back of
the BC house where you can place coal?

A. There's a shoot at the back of
the BC house.

Q. At the back of the BC house.

A. Yes, there is a chimney which
leads. There's where the chimney belt drops off
and also a place back there where it goes

have a problem with your belt, if we ever do reverse it, it could dump it out on the ground, yes, sir.

Q. So you could actually take the coal after it's left B belt and going onto C belt and you can reverse C belt and dump coal back out through the BC house; is that correct?

A. That is not done except in special emergency cases. It cannot be just normally reversed.

Q. My questions is can you do that.

A. It could on special conditions.

Q. Has it ever been done?

A. I have done it when I have come over a belt with a rip.

Q. Couldn't you take that coal you dumped over the shoot and load it in the railroad cars?

have a problem with your belt. If we ever do
reverse it, it could keep it out on the
ground, yes, sir.

Q. So you could actually take the
coat after it's left a belt and going onto
belt and you can reverse C belt and that
coat back out through the B house, is that
correct?

A. That is not done except in
special emergency cases. It cannot be done
normally reversed.

Q. If question is can you do that?

A. It could in special conditions.

Q. Has it ever been done?

A. I have done it when I have come

over a belt with a tip.

Q. Would you say that over, you

dumped over the wheel and then it is the
reversed directly.

A. Yes.

Q. As a matter of fact, there's a track that runs right down beside the BC house?

A. Yes.

Q. And there are railroad cars sitting back there most of the time, isn't there?

A. Right.

Q. And they've got coal in them, don't they?

A. Yes, sir.

Q. And that coal is coal that came out of the railroad cars up on the dumper, isn't it.

A. It's cleaned up coal, yes. It came from all over the piers.

Q. And retarders are used to stop cars, aren't they?

A. Yes.

Q. As a matter of fact, Claret's
train was four times faster than the
honesty.

A. Yes.

Q. And there are railroad cars
sitting back there west of the line, aren't
there?

A. Right.

Q. And they've got coal in them,
don't they?

A. Yes, sir.

Q. And that coal is coal that came
out of the railroad cars up on the bridge,
isn't it?

A. It's a mixture of coal, yes, it
came from all over the place.

Q. And railroads are used to ship
coal, aren't they?

A. Yes.

Q. And they are used all over the railroad system to stop cars, aren't they?

A. Yes.

MR. WILSON: That's all the questions I have, Your Honor. Thank you.
